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June 21, 2002

Secretary
Federal Communications Commission
Washington, DC 20554

**RE: Petition For Reconsideration of
Denial of Petition For Rulemaking
In FCC Docket RM-10330**

Dear Commissioners and Commission Staff,

I am Don Schellhardt, Esquire of Golden, Colorado, writing on behalf of myself and Nick Leggett of Reston, Virginia. Together, we are the Petitioners in FCC Docket RM-10330.

We hereby submit a Petition for Reconsideration of the denial of our Petition for Rulemaking in FCC Docket RM-10330. We were notified of the denial in a letter that was dated May 24, postmarked June 3 and signed by Edmond J. Thomas, of the FCC's Office of Engineering. We now appeal to the full Federal Communications Commission for a reversal of this action by the Commission's staff.

Our Petition for Reconsideration is **enclosed**. Also **enclosed**, and appearing before the text of the Reconsideration Petition itself, is a letter we have sent to 14 key Congressional leaders and 6 key officials in the Federal Government's Executive Branch. All of these individuals, except for President George Bush and EPA Administrator Christine Todd Whitman, were *also* mailed copies of our Petition for Rulemaking last September. We are now urging each of them to contact you in support of our Reconsideration Petition.

For The Record, here are the names of *Congressional leaders* we have asked to help us:

Thomas Daschle, Democrat of South Dakota, Senate Majority Leader

Trent Lott, Republican of Mississippi, Senate Minority Leader

Dennis Hastert, Republican of Illinois, Speaker of the House

Richard Armey, Republican of Texas, House Majority Leader

Richard Gephardt, Democrat of Missouri, House Minority Leader

Ernest Hollings, Democrat of South Carolina, Chairman of the Senate Commerce

Committee and Senate Communications Subcommittee

John McCain, Republican of Arizona, Ranking Minority Member, Senate Commerce
Committee

Ted Stevens, Republican of Alaska, Chairman of the Senate Communications Subcommittee
W. J. "Billy" Tauzin, Republican of Louisiana, Chairman, House Energy and Commerce Committee
John Dingell, Democrat of Michigan, Ranking Minority Member, House Energy and Commerce Committee
Michael G. Oxley, Republican of Ohio, Chairman, House Telecommunications Subcommittee
Edward Markey, Democrat of Massachusetts, Ranking Minority Member, House Telecommunications Subcommittee
Pat Roberts, Republican of Kansas, Ranking Minority Member, Senate Subcommittee on Emerging Threats and Capabilities
"Mac" Thornberry, Republican of Texas, United States Representative

Here are the names of the *Executive Branch leaders* we have asked to support our Petition for Reconsideration in FCC Docket RM-10330:

George W. Bush, President of the United States
Donald Rumsfeld, Secretary of Defense
Christine Todd Whitman, Administrator, United States Environmental Protection Agency
Tom Ridge, Director, Office of Homeland Security
Jane F. Garvey, Chair, Federal Aviation Administration
Carol J. Carmody, Vice Chair, National Transportation Safety Board

We will soon see which of these individuals, if any, are willing to extend themselves on a matter of pressing *national security*: that is, the need for mandatory shielding to protect vital civilian electronics equipment from the possible hostile use of an Electromagnetic Pulse (EMP). We note that such shielding could also protect *human health*, by reducing or preventing the arguably harmful leakage of electromagnetic radiation from computers, appliances and other commonly used electronics equipment.

In any event, we urge the FCC Commissioners to act swiftly and favorably on our Petition for Reconsideration in FCC Docket Rm-10330.

Schellhardt and Leggett
Petition For Reconsideration Cover Letter
FCC Docket RM-10330
June 21, 2002
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Sincerely,

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Trent Lott, Senate Minority Leader
Dennis Hastert, Speaker of the House
Richard Armey, House Majority Leader
Richard Gephardt, House Minority Leader
Ernest Hollings, Chairman, Senate Commerce Committee
John McCain, Ranking Minority Member, Senate Commerce Committee
Ted Stevens, Chairman, Senate Communications Subcommittee
W.J. "Billy" Tauzin, Chairman, House Energy and Commerce Committee
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Tom Ridge, Director, Office of Homeland Security
Jane F. Garvey, Chair, Federal Aviation Administration
Carol J. Carmody, Vice Chair, National Transportation Safety Board

Dear Congressional and Executive Branch Leaders:

We direct your attention to the **enclosed** document. Each of your names appears in it -- in the Section entitled "A Note to Future Journalists and Historians".

The document itself is a *Petition for Reconsideration* of the denial of a Petition for Rulemaking by the Engineering and Technology Office of the Federal Communications Commission. *We urge each and every one of you to contact the FCC in support of this Petition for Reconsideration.*

The FCC Docket in question is Docket RM-10330. The Petitioners are myself and Nickolaus E. Leggett of Reston, Virginia.

Our RM-10330 Petition for Rulemaking, filed on September 25, 2001, urges the FCC to institute *mandatory shielding requirements* for vital civilian electronics equipment -- in order to protect such equipment against the possible hostile use of an *Electromagnetic Pulse (EMP)* by terrorists, "rogue nations" and/or other enemies of the United States. Such shielding could also protect *human health*, by keeping appliances, computers and other widely used equipment from "leaking" electromagnetic radiation that may be harmful to the exposed equipment users.

This is actually our *second attempt* to persuade the Federal Communications Commission to require the protective shielding of certain civilian electronics equipment. We filed a Petition for a Notice of Inquiry, which became Docket RM-5528, in 1986. The Petition was denied by the FCC's staff, and on appeal by the full Commission, in 1987.

After the events of September 11, 2001, we decided to try again -- in the hope that *this* time the Federal Communications Commission would be more concerned about potentially devastating electromagnetic attacks by terrorists and/or others. Apparently, it isn't -- or at least its Office of Engineering and Technology isn't. We shall see, shortly, whether the four current Commissioners are similarly unconcerned.

The letter denying our September 2001 Petition For Rulemaking was dated May 24, postmarked June 3 and signed by Edmond J. Thomas, Chief of the FCC's Office of Engineering and Technology. The enclosed Petition for Reconsideration asks the four current Commissioners on the FCC to override this decision by the Commission's staff.

With the exception of two people, *each of you* was sent a copy of our original Petition for Rulemaking when we filed it last September. The exceptions are President George W. Bush, whom we added in case he has not yet been fully briefed on the terrorist potential of Electromagnetic Pulse, and EPA Administrator Christine Todd Whitman, whom we added because of the human health concerns posed by leakage of electromagnetic radiation from "everyday" electronic equipment.

In September, when we sent you our Petition for Rulemaking, we only *apprised you* of this issue and what we, as private citizens, are attempting to do about it. *Today, we are asking for your active intervention and assistance.*

This is, potentially, a grave matter of national security. It may also pose very significant human health issues as well. And *you* -- each of you -- are leaders, to whom the freedom and welfare of our country have been entrusted.

If the two of us are right and a catastrophe someday occurs, with respect to the nation's security *and/or* with respect to the health of its everyday citizens, you will not be able to escape accountability for the results by pointing to FCC Docket RM-10330 as a responsibility of the FCC alone.

You have been told about the situation. *You* have been sent a copy of our Petition for Reconsideration and, with only two exceptions, a copy of our September 2001 Petition for Rulemaking as well. *Also*, as of today, *you have been told HOW you can help us at this time* -- *AND you have been asked, as clearly and passionately as our words can convey, to provide such assistance.*

Please don't let us down. Don't let the country down. Don't let *yourselves* down.

Please contact the Federal Communications Commission and urge the Commissioners to grant our Petition for Reconsideration in Docket RM-10330 -- so that long overdue action, to guard America's security *and* the health of its citizens, can finally begin.

Sincerely,

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PS. *Re access to the documents in FCC Docket RM-10330:*

To read any or all of the documents which have been in FCC Docket RM-10330, including either or both of our two Petitions, please proceed to the FCC's Web Site at www.fcc.gov

After that, go to the bottom of the FCC Home Page and click on "E-Filing". After the E-Filing page appears, scroll down to "Electronic Comment Filing System" (ECFS) and click on it. Then, after the ECFS page appears, look to the upper left hand corner and click on "Search Filed Documents".

Once a box appears, find "Proceeding" and type in RM-10330. Then, just below the box, click on "Retrieve Document List". After that, a list of every single document filed in FCC Docket RM-10330 will be made available to you. Scroll and click at will.

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Shielding Of)
Electronic Equipment)
Against Acts Of War)
Or Terrorism)
Involving Hostile Use Of)
Electromagnetic Pulse)
(EMP))

Docket No. RM-10330

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Docket No. RM-10330

**PETITION FOR RECONSIDERATION
OF THE DENIAL OF THE PETITION FOR RULEMAKING
IN FCC DOCKET NO. RM-10330,**

**SUBMITTED BY THE RM-10330 PETITIONERS:
DON SCHELLHARDT, ESQUIRE AND NICKOLAUS E. LEGGETT**

We are the Petitioners in FCC Docket RM-10330: Don Schellhardt, Esquire, of Golden, Colorado and Nickolaus E. Leggett of Reston, Virginia.

We hereby submit this Petition for Reconsideration of the denial of our RM-10330 Petition for Rulemaking by the Commission's staff. We ask for consideration of this matter by the full Federal Communications Commission.

Docket RM-10330 concerns our proposal for mandatory shielding of certain civilian electronics equipment -- in order to protect such equipment from the possible hostile use of an *Electromagnetic Pulse (EMP)* by terrorists, "rogue nations" and/or other enemies of the United States. Such shielding could also protect *human health*, by reducing or eliminating arguably harmful "leakage" of electromagnetic radiation from appliances, computers and other commonly used equipment.

**NOTIFICATION OF DENIAL OF
THE RM-10330 PETITION FOR RULEMAKING**

We were notified of the denial of the RM-10330 Petition for Rulemaking in a letter signed by Edmond J. Thomas, Chief of the FCC's Office of Engineering and Technology.

The letter was dated May 24, 2002, but postmarked June 3, 2002. It was received By Nickolaus Leggett on June 4, 2002.

As of today's date -- June 21, 2002 -- the letter which denies our Petition has not yet been posted among the RM-10330 Docket documents on the Eletronic Comment Filing System (ECFS) at the FCC's Web Site (www.fcc.gov).

That is: As of June 21, 2002, the public has not yet been notified of the denial of our Petition for Rulemaking, nor has the text of Mr. Thomas' letter been posted for inspection and review by the public.

**REASONS FOR RECONSIDERATION OF
THE DENIAL OF
THE RM-10330 PETITION FOR RULEMAKING**

There are a number of reasons why the full Federal Communications Commission should overrule the Office of Engineering and Technology staff, and proceed with issuance of a Notice of Proposed Rulemaking on the mandatory shielding of certain civilian electronic equipment.

Breach of Statutory Duty

Under its earliest and most basic charter, the Communications Act of 1934, the FCC has been directed to protect the national security interests of the United States.

Although national security concerns are central to our Petition for Rulemaking in Docket RM-10330, the letter denying our Petition says nothing to indicate that such national security concerns are groundless.

The letter of denial does not assert -- let alone demonstrate!! -- that our concerns about potentially cataclysmic damage from an Electromagnetic Pulse attack are unfounded. Nor does the letter of denial assure us that the FCC, or any other institution, is taking adequate steps to mitigate or prevent the possible damage from this threat. All the letter of denial *really* states on this important point is that equipment manufacturers, and related parties in the private sector, have the sole responsibility to decide what to do about this threat -- if anything.

Nothing in the letter of denial, nor in the overall record in Docket RM-10330 so far, provides any indication that the Commission has made, or intends to make, any effort whatsoever to *assure* that these voluntary private sector deliberations will yield any actual results.

It is an axiom of good management, and often of good law, that:

You can delegate *authority*, but you cannot delegate *responsibility*.

Unfortunately, the FCC -- or at least its Office of Engineering and Technology -- is apparently attempting to do precisely that. It has, in effect, attempted to “subcontract” its national security obligations, at least in this area, to parties in the private sector.

The FCC’s approach might pass statutory muster *if* it were coupled with some kind of *accountability*, such as specified goals or “performance targets”, deadlines for meeting those goals or targets and careful, continuing Commission oversight of both the process and the results. As matters stand now, however, the Commission is giving the private sector a total “blank check” to do whatever it wishes -- even though *the general public* may pay the price if the private sector parties do nothing, or at least nothing meaningful.

In general, we do not understand why matters of national security should be left exclusively in the hands of those who have no legal obligation to protect national security. In particular, we do not understand the blind faith of the Commission in the wisdom of telecommunications companies which are now teetering on the brink of bankruptcy, as a direct result of poor decisions by their leaders.

In any event, on a matter of *national security*, an attempted delegation of both authority *and* responsibility is farther than the Commission may legally go -- until and unless Congress decides to re-write the Communications Act of 1934 on this point.

Problems With Industry-Developed “Standards”

The letter of denial relies heavily on the existence of *some* wildly scattered “standards” on EMP shielding which the private sector has developed, or has reportedly *started* to develop, during the 16 years since we originally asked the Commission for action on EMP, in FCC Docket RM-5528.

In pertinent part, the letter states (on page 3) that:

... you [the RM-10330 Petitioners] have failed to specifically describe any deficiencies in those [private sector] standards, or the ongoing process.

We are, frankly, puzzled -- indeed, mystified -- by this statement.

We had thought we had made our objections to “the ongoing process”, and its very limited results, abundantly clear.

Nevertheless, to remove all doubt, we will *re-state* our objections as clearly as we know how to phrase them:

(1) We object to the current EMP shielding “standards” because *compliance with the “standards” is voluntary*.

Our country’s *fire safety* codes are not voluntary. Our country’s *earthquake safety* codes are not voluntary. Our country’s *building construction* codes are not voluntary. Even our country’s *zoning* codes are not voluntary.

Why on Earth should we have voluntary codes for the reliability of equipment whose failure could threaten human lives and/or the nation's whole economy?

(2) *The current, industry-developed "standards" are woefully incomplete in their coverage of equipment.* They are a *patchwork*, leaving *most* civilian electronic equipment totally unaddressed. As we look at this patchwork, either the scope of these so-called "standards" is too limited -- for the most part, focused only on central telephone offices and similar facilities -- *and/or* the recommended (not required) shielding is designed only to protect the equipment from "normal" electromagnetic interference, rather than the far higher intensity of an EMP that has been artificially generated by a specialized non-nuclear weapon or a high altitude nuclear explosion.

(3) *There is no provision for any Commission review of any current or contemplated EMP "standards" developed by the private sector.* Even if industry-developed EMP "standards" were *mandatory* rather than voluntary, and even if they were *comprehensive* rather than an incomplete patchwork, how would we know that the "standards" were *effective*? Without oversight, review and even testing by the Federal Communications Commission, or by some other financially disinterested institution with an obligation to serve *the general public*, how would we know?

Again: We face the mystery of why the Commission is willing to take the claims of the private sector "*on faith*" -- on a matter suffused with the public interest.

Unresolved Factual Issues

We note that the documents filed in Docket RM-10330 to date do not begin to resolve a number of important factual issues. We contend that a Notice of Proposed Rulemaking, or at the very least a Notice of Inquiry, is needed in order to “flush out” more information.

A far-from-exhaustive list of unresolved factual issues would include the following:

(1) *Costs of compliance.* Verizon predicts compliance costs would run into “trillions of dollars”. We are very curious to see their methodology, particularly since our proposal contains a cost exemption that would, in most cases, “cap” the *maximum* financial burden at 5% of current equipment production costs.

Our own estimate is that all of the vitally important shielding could be done for a fraction of what certain telecommunications companies have already wasted on overbuilding of fiber optics capacity.

Who’s right? Let’s have a *serious* proceeding on EMP shielding to put *everybody’s* data, analyses and methodologies On The Record for the Commission, and the general public, to see.

(2) *Levels of Shielding.* What constitutes an adequate level of protection?

In our RM-10330 Petition, we have proposed protection against 100,000 volts per meter (double the EMP release from one typical, high-altitude thermonuclear explosion) as a starting point for discussion. So far, no one else has tossed out even an *estimate*.

By issuing a *proposed* rule, and demonstrating that it takes the matter of EMP shielding seriously, the FCC could help to bring On The Record much more information -- from knowledgeable parties who have not volunteered it so far.

(3) *EMP Protection Technologies.* What *range* of technologies are available? This is another area in which those who know the most have said the least, probably in the hope that lack of information will discourage the Commission from taking any action on EMP. As a “signal” that action *is* being contemplated, with or without cooperation from the private sector, a proposed rule could encourage the private sector to be more forthcoming with useful information.

(4) *Alternatives to Our Own Proposed Approach.* A number of commenting parties have criticized our proposal for action on EMP, but none of them has advanced a constructive alternative. If it is contended that our approach is too costly, or too cumbersome, what *better* approach could be taken to the goal of adequate protection for our citizens and our economy? The only alternative offered has been no action at all.

INTEGRATION WITH HEALTH ISSUES

As we have mentioned in our Petition for Rulemaking, and in other documents filed with the FCC, shielding of electronic equipment is a two-way street. Shielding helps to keep harmful emissions from coming *into* the equipment, but shielding also helps to keep harmful emissions from coming *out of* the equipment. Therefore, better shielding of electronic equipment will both reduce vulnerability to an EMP attack *and* reduce human exposure to equipment emissions which may be quite harmful, particularly in their traditionally under-studied non-thermal effects.

These two related concerns -- the security of the nation *and* the health of individuals -- *could* be integrated into a single, comprehensive proposed rule.

As one *possible* example, the FCC could propose the following:

(a) As a general rule, for all electronic equipment which falls within the FCC's jurisdiction, shielding would have to be upgraded so that human exposure to electromagnetic radiation from equipment would not exceed the maximum levels permissible under standards developed by the National Council on Radiation Protection (NCRP). These referenced NCRP standards are notably more cautious than the FCC's current standards, which incorporate the more lenient standards of the ANSI (American National Standards Institute). Also, the extension of NCRP human exposure standards to all jurisdictional equipment would replace the current FCC policy of excluding certain otherwise jurisdictional equipment.

(b) For civilian electronic equipment deemed *vital*, a higher standard would apply: that is, shielding sufficient to protect the equipment from an Electromagnetic Pulse equal to 100,000 volts per meter. This is the performance standard we have proposed in the RM-10330 Petition for Rulemaking.

A NOTE TO FUTURE JOURNALISTS AND HISTORIANS

Neither of us knows, as a certainty, whether or not an EMP attack will occur.

What we do know, as a certainty, is that an EMP attack **could** occur -- and, if it did, could be devastating to a point beyond the imagination of most Americans.

Even a small, but carefully targeted, non-nuclear EMP weapon -- if aimed, for example, at Wall Street or O'Hare -- could be wildly disruptive. An EMP from a high-altitude nuclear explosion, detonated at mid-continent, could disable or destroy electronic equipment across the nation. It could claim millions of lives indirectly, through disruption of food shipments and other infrastructure services, and it might even end America's status as a superpower.

Because the potential damage from a possible EMP attack is so great, while at the same time the means to protect ourselves are clearly available, we have been dogged in our efforts to bring the danger of an EMP attack to the attention of the Federal Communications Commission, among others.

Ultimately, however, we can only do so much. Having tried our very best to sound a warning, and at the same time to propose a *constructive* response to the danger, we must at some point "rest our case" -- at least for now.

Like Army Air Corps General Billy Mitchell, we can only speak the truth as we see it, and pray that we will be heeded by those with more worldly power than we.

Nevertheless, having done the very best we know how, we close this appeal by fixing responsibility where it *now* clearly lies: on the shoulders of the four current Commissioners of the FCC and, more broadly, on the Congressional and Executive Branch leaders who hold the privileges *and* accountabilities of high national office.

In the event that a major EMP attack *is* ever undertaken against the United States, we want The Record in FCC Docket RM-10330 to indicate *clearly* -- name by name by name -- *exactly* whom we have approached for help.

Let no one on this list claim they knew nothing.

The Four Current FCC Commissioners

For the possible benefit of future journalists and historians, here are the names of the four current Commissioners who will decide the fate of this RM-10330 Petition for Reconsideration:

Michael Powell, *Chairman*, appointed by President George W. Bush
Kathleen G. Abernathy, appointed by President George W. Bush
Michael J. Copps, appointed by President George W. Bush
Kevin J. Martin, appointed by President George W. Bush

Other Executive Branch Leaders

Each of the following Executive Branch leaders was sent a copy of the RM-10330 Petition for Rulemaking in September of 2001. Now each one of them is being sent a copy of this RM-10330 Petition for Reconsideration, coupled with a request to contact the Federal Communications Commission in support of the Reconsideration Petition.

Donald Rumsfeld, *Secretary* of Defense
Tom Ridge, *Director*, Office of Homeland Security
Jane F. Garvey, *Chair*, Federal Aviation Administration
Carol J. Carmody, Vice Chair [formerly Acting Chair], National Transportation Safety Board

There was no meaningful response to our September 2001 contact from any of these leaders. The Office of Homeland Security did send us a form letter, or rather a form postcard, promising to contact us shortly. That was 6 months ago.

The Executive Branch leaders listed below were *not* contacted by us during September of 2001. However, they are being asked for help *now* -- and are being sent a copy of this RM-10330 Petition for Reconsideration.

George W. Bush, *President* of the United States
Christine Todd Whitman, *Administrator*, United States Environmental Protection Agency

Congressional Leaders

Each of the following Congressional leaders was contacted in September of 2001 and mailed a copy of the RM-10330 Petition for Rulemaking. Now, each of these Congressional leaders is being sent a copy of this RM-10330 Petition for Reconsideration -- *and* is being asked to contact the Federal Communications Commission in support of the RM-10330 Reconsideration Petition.

Thomas Daschle, Democrat of South Dakota, Senate Majority *Leader*
Trent Lott, Republican of Mississippi, Senate Minority *Leader*
Dennis Hastert, Republican of Illinois, *Speaker* of the House
Richard Armey, Republican of Texas, House Majority *Leader*
Richard Gephardt, Democrat of Missouri, House Minority *Leader*
Ernest Hollings, Democrat of South Carolina, *Chairman*, Senate Commerce Committee and Senate Communications Subcommittee
John McCain, Republican of Arizona, *Ranking* Minority Member, Senate Commerce Committee
Ted Stevens, Republican of Alaska, *Ranking* Minority Member, Senate Communications Subcommittee
W.J. "Billy" Tauzin, Republican of Louisiana, *Chairman*, House Energy and Commerce Committee
John Dingell, Democrat of Michigan, *Ranking* Minority Member, House Energy and Commerce Committee
Michael G. Oxley, Republican of Ohio, *Chairman*, House Telecommunications Subcommittee
Edward Markey, Democrat of Massachusetts, *Ranking* Minority Member, House Telecommunications Subcommittee
Pat Roberts, Republican of Kansas, *Ranking* Minority Member, Senate Subcommittee on Emerging Threats and Capabilities
"Mac" Thornberry, Republican of Texas, United States Representative

None of these Congressional leaders responded in any way to the RM-10330 Petition for Rulemaking.

We note, however, that two out of these 14 Congressional leaders -- Republican Senator Pat Roberts of Kansas and Republican Representative "Mac" Thornberry of Texas -- were *already* On The Record, *before* September of 2001, in support of action to guard against an EMP attack. We commend them heartily.

We do not know which of the four current FCC Commissioners, if any, will vote to grant this Petition for Reconsideration. We do not know which of the Executive Branch and Congressional leaders we have contacted, if any, will decide to contact the FCC on behalf of the Reconsideration Petition.

What we do know is this:

We have done our best. We have sounded the alarm. *If* a major EMP attack ever occurs, let none of the leaders we have named claim they knew nothing.

CONCLUSION

For the reasons set forth herein, we urge the four current Commissioners of the Federal Communications Commission to grant this Petition for Reconsideration -- and proceed forthwith to issue a proposed rule, or at least a Notice of Inquiry, in this Docket. We would accept and support expansion of the Docket to include human health concerns.

Respectfully submitted,

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Dated: _____

June 21, 2002